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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/615,571	07/13/2000	Paul Harris	5951.010-US	4949

25907 7590 07/12/2004

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EXAMINER	
PRIEBE, SCOTT DAVID	
ART UNIT	**PAPER NUMBER**
1632	

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/615,571	HARRIS ET AL.	
	Examiner	**Art Unit**	
	Scott D. Priebe	1632	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires *5* months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: *125-128*.

   Claim(s) objected to: *105-107,112 and 116*.

   Claim(s) rejected: *100,102-104,109-111,114,115,117 and 119-124*.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

Scott D. Priebe

Scott D. Priebe
Primary Examiner
Art Unit: 1632

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments refer to publications that have not been provided, these publications and assertions as to their contents have not been considered. With respect to the rejection for lack of a written description adequate to demonstrate possession, Applicant makes a series of statements that are not supported by evidence. The relevance of the reference to the CAZy database is unclear since the enzyme encoded by the claimed nucleic acid sequence is not a glycosidase, it is a phospholipase B. Applicant states that three structural features have been used in the art to define relatedness of genes and proteins, % identity between amino acid or nucleic acid sequences and hybridization under stringent conditions. However, these criteria apply to naturally occuring polypeptides and nucleic acids where the sequences are known to be wild-type (or functional), while the claims also embrace man-made variants of SEQ ID NO: 1, which is the sole naturally occuring nucleic acid sequence disclosed. No artificial amino acid sequences are disclosed. Furthermore, as Applicant states, the prior art was devoid of a phopholipase B or nucleotide sequence encoding such that shared any significant homology SEQ ID NO: 2 or SEQ ID NO: 1, respectively. The specification also fails to disclose any amino acid sequence differing from SEQ ID NO: 2 or nucleic acid encoding such a differing amino acid sequence, whether a natural or man-made sequence. Consequently, there is nothing to which one can compare SEQ ID NO: 2, whether by sequence homology or by hybridization. There is no information or evidence from either the prior art or the specification that would allow one of skill in the art to predict with any reliability whether an amino acid sequence differing from SEQ ID NO: 2 in up to 10% of its amino acids would have phospholipase B activity. With respect to the enablement rejection,Applicant asserts that at the time the invention was made (Oct. 1999) that it was routine for one of skill in the art to make multiple modifications to an amino acid sequence, citing a reference published in 2003. Applicant is reminded that the enablement requirement must have been met in Oct. of 1999. Applicant cites Example 2 as showing how to make a claimed nucleic acid. However, this example shows obtaining complete genomic clones from the same source organism as a partial clone - one that encodes SEQ ID NO: 2. It does not demonstrate using a nucleic acid of SEQ ID NO: 1 to isolate a claimed nucleic acid from a different source, nor does the specification identify a source, from which one would be able to isolate a claimed nucleic acid, other than A. oryzae. More importantly, the claims are not limited to sequences obtainable from a natural source, and the example does not teach how to make a nucleic acid readable on the claims that cannot be found in nature and encodes a different amino acid sequence than SEQ ID NO: 2. Such unknown artificial sequences would have been expected to make up the vast majority of the species readable on the claims. .